

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**SUSAN M. POTTS, RESPONDENT,**

**v.**

**RAYMOND A. POTTS, II, APPELLANT.**

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DOCKET NUMBER WD70196  
(Consolidated with WD 70455)

DATE: February 23, 2010

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Appeal From:  
PETTIS COUNTY CIRCUIT COURT  
THE HONORABLE RICHARD PAUL BEARD, JUDGE

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Appellate Judges:  
Division One: Lisa White Hardwick, P.J., James M. Smart, Jr., and Alok Ahuja, JJ.

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Attorneys:  
Michelle E. Jakobe, Lee's Summit, MO, **for appellant.**

Stanley Brian Cox, Sedalia, MO, **for respondent.**

# **MISSOURI APPELLATE COURT OPINION SUMMARY**

## **MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**SUSAN M. POTTS, RESPONDENT**

**v.**

**RAYMOND A. POTTS, II, APPELLANT**

WD70196 (consolidated with WD70455)

PETTIS COUNTY CIRCUIT COURT

Before Division One Judges: Lisa White Hardwick, P.J., James M. Smart, Jr., and Alok Ahuja, JJ.

Susan Potts filed a petition to for dissolution of her marriage to Raymond Potts. The trial court awarded Raymond and Susan joint legal custody of their unemancipated children; awarded Susan sole physical custody of their children and Raymond visitation; held the prenuptial agreement to be invalid; determined that all property was marital except for Raymond's ownership of the business and an outboard motor which was ruled to be Raymond's nonmarital property. The court determined that the profit from the real estate that was sold was a marital asset, and awarded it to Raymond along with the business. The court awarded Susan \$237,931 in marital assets, but the court also granted Raymond an equalizing money judgment against Susan in the amount of \$158,436, payable at the rate of \$500 per month. Raymond was assigned responsibility for \$107,000 in debts. Child support was ordered at \$1,180 per month. The court ordered Raymond to pay Susan \$2,500 per month as maintenance. The court awarded Susan \$22,000 in attorneys' fees. The trial court subsequently ordered Raymond to pay \$5,000 for Susan's attorneys' fees and costs on appeal. Raymond appeals.

**AFFIRMED.**

### **Division One holds:**

Where a parent is, for all practical purposes based on the parenting time awarded in the judgment, a joint physical custodian, it is not necessary to find error or to remand for correction of the decree.

A prenuptial agreement may be held unconscionable where evidence suggested it was presented at the last minute, the wife did not understand the agreement, and the agreement was drafted so as to allow the husband a free hand to convert marital property into separate property.

Where the division of marital property is not equal, but not shockingly disproportionate, it is not an abuse of discretion.

Where the trial court found that a husband earns more money than a wife, that the husband was guilty of marital misconduct, and that the husband's actions increased the wife's legal expenses, an award of attorneys' fees is not an abuse of discretion.

A maintenance award is not error where the determination of husband's income is supported by evidence.

A child support award is not error where the income attributed to the parties is supported by evidence and credits for overnight parenting time are based on time actually exercised.

An award of appellate fees was not error where the court considered the parties' recent financial status, and was willing to hear further evidence of recent financial factors, and yet no party offered such evidence, and the award was not an exorbitant amount in view of the pertinent circumstances.

**Per Curiam Opinion**

February 23, 2010

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